

(f) The term *Department* means the United States Department of Labor.

(g) The term *disposable pay* means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this subpart, "amounts required by law to be withheld" include amounts for deductions such as social security taxes and withholding taxes but do not include any amount withheld pursuant to a court order.

(h) The term *employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments but does not include an agency of the Federal Government.

(i) The term *evidence of service* means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(j) The term *garnishment* means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

(k) The term *hearing official* means any qualified individual, as determined by the Department.

(l) The term *withholding order* means any order for withholding or garnishment of pay issued by the Department. For purposes of this section, the terms "wage garnishment order" and "garnishment order" have the same meaning as "withholding order."

§ 20.204 General rule.

Whenever the Department determines that a delinquent debt is owed by an individual, to the Department or in connection with any program administered by the Department, the Department may initiate proceedings administratively to garnish the wages of the delinquent debtor.

§ 20.205 Notice requirements.

(a) At least 30 days before the initiation of garnishment proceedings, the Department shall mail, by first class mail to the debtor's last known address a written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The intention of the Department to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(3) An explanation of the debtor's rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise his or her rights.

(b) The debtor shall be afforded the opportunity:

(1) To inspect and copy the Department's records related to the debt;

(2) To enter into a written repayment agreement with the Department under terms agreeable to the Department; and

(3) For a hearing in accordance with § 20.206 before a hearing official. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under 20.206(b)(2).

(c) The Department will retain evidence of service indicating the date of mailing of the notice.

§ 20.206 Hearing.

(a) *Request for hearing.* If the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule, the Department shall provide a written or oral hearing in accordance with 31 CFR 285.11(f) before a hearing official.

(b) *Type of hearing or review.* (1) For purposes of this subpart, whenever the Department is required to afford a debtor a hearing, the Department shall provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the

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claim turns on the issue of credibility or veracity.

(2) If a hearing official determines that an oral hearing is appropriate, the time and location of the hearing, including the amount of time allotted for the hearing, shall be at the discretion of the hearing official. An oral hearing may, at the discretion of the hearing official, be conducted either in-person, by telephone conference, or by other electronic means. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All charges incurred during the hearing as a result of the use of telephone conference or other electronic means will be the responsibility of the Department.

(3) In those cases when an oral hearing is not required by this section, a hearing official shall nevertheless accord the debtor a “paper hearing,” that is, a hearing official will decide the issues in dispute based upon a review of the written record. The hearing official will establish a reasonable deadline for the submission of evidence.

(c) *Effect of timely request.* Subject to § 20.206(k), if the debtor’s written request is received by the Department on or before the 15th business day following the mailing of the notice described in § 20.205(a), the Department shall not issue a withholding order under § 20.207 until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (h) and (i) of this section has been rendered.

(d) *Failure to timely request a hearing.* If the debtor’s written request is received by the Department after the 15th business day following the mailing of the notice described in § 20.205(a), the Department shall provide the debtor with a hearing before a hearing official. However, the Department will not delay issuance of a withholding order unless the Department determines that the delay in filing the request was caused by factors beyond the debtor’s control or the Department receives information that the Department believes justifies a delay or cancellation of the withholding order.

(e) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

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(1) The date and time of a hearing conducted by telephone conference or other electronic means;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a written hearing.

(f) *Burden of proof.* (1) The agency will have the burden of going forward to prove the existence or amount of the debt. The Department can satisfy this burden by submitting a certified copy of the adjudication or other document that establishes the existence of the debt and the amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that:

(i) The terms of the repayment schedule are unlawful;

(ii) The terms would cause a financial hardship to the debtor; or

(iii) The collection of the debt may not be pursued due to operation of law.

(3) Debts that arise under the Federal Employees Compensation Act, 5 U.S.C. 8101–8193, are subject to preclusion of administrative and judicial review, as described at 5 U.S.C. 8128(b). As a result, once the Department meets its burden of showing the existence and amount of a debt under this statute, the debtor must prove by a preponderance of the evidence that:

(i) The documentation put forward by the agency to establish the debt was not authentic; or

(ii) The debt was incurred by someone other than the debtor as a result of identity theft.

(g) *Record.* The hearing official must maintain a summary record of any hearing provided under this section.

(h) *Hearing procedure.* A hearing is an informal process and the hearing official is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. However, witnesses who testify in oral hearings must do so under affirmation, so that 18 U.S.C. 1001 applies.

(i) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than 60 days after

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the date on which the request for such hearing was received. If a hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(1) The Department may not issue a withholding order until the hearing is held and a decision rendered; or

(2) If the Department had previously issued a withholding order to the debtor's employer, the Department must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(j) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(k) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act, 5 U.S.C. 701-706.

(l) *Failure to appear.* In the absence of good cause shown to the hearing official, a debtor who fails to appear at a hearing scheduled pursuant to this section will be deemed as not having timely filed a request for a hearing.

§ 20.207 Wage garnishment order.

(a) Unless the Department receives information that the Department believes justifies a delay or cancellation of the withholding order, the Department shall send, by first class mail, a withholding order to the debtor's employer:

(1) Within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice described in § 20.205(a), or,

(2) If a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the hearing official, or,

(3) As soon as reasonably possible thereafter.

(b) The withholding order sent to the employer under paragraph (a) of this section shall be in the form prescribed by the Secretary of the Treasury. The

withholding order shall contain the signature of, or the image of the signature of, the Secretary of Labor or his or her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and Employee Identification Number, as well as instructions for withholding and information as to where payments should be sent.

(c) The Department will retain evidence of service indicating the date of mailing of the order.

§ 20.208 Certification by employer.

Along with the withholding order, the agency shall send to the employer a certification in the form prescribed by the Secretary of the Treasury. The employer shall complete and return the certification to the Department within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

§ 20.209 Amounts withheld.

(a) After an employer receives a garnishment order, the employer must deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (b) of this section.

(b) Subject to the provisions in paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

(1) The amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay; or

(2) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(1) Unless otherwise provided by Federal law, withholding orders issued under this subpart shall be paid in the amounts set forth under paragraph (b) of this section and shall have priority